IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Panna Lal Joshi. **VS**. State of Raj. & Ors.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.28/2005
against the order dated 20.12.2004 passed by in
S.B. Civil Writ Petition No.5835/2004.

Date of judgment : 21st April, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. I.R. Choudhary) for the appellant.
Mr. Vikram Choudhary)

Mr. L.R. Upadhyay, Dy. Government Advocate.

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BY THE COURT:- (Per Hon'ble Mr. Rajesh Balia, J.)

Heard learned counsel for the parties.

This appeal is directed against the judgment of learned Single Judge dated 20.12.2004 by which the writ petition filed by the petitioner was dismissed only on the ground that it suffers from laches.

The facts of the case are that the petitioner has passed

Secondary School Examination, 1996 and has also passed Senior Secondary (Vocational) Examination, 1998 and after the Bridge Course was introduced, he also passed the Senior Secondary Bridge Course Examination from the Secondary Education Board, Rajasthan in the year 2001. In addition to the aforesaid qualifications, the petitioner has also passed B.P.Ed., one year course in 2002 from Maharishi Dayanand Sarswati University, Ajmer which is a diploma in physical training teachers. Thus, the petitioner was eligible to be considered for appointment to the post of Physical Teacher Grade III.

On 28th July, 2003, the respondents published an advertisement inviting applications for appointment to the number of posts of Physical Teacher Grade III. After the advertisement was issued on 28th July, 2003, a circular dated 16.8.2003 was issued by the State Government purporting to be clarificactory in nature directing that in computing the merit of the candidates, who have passed Senior Secondary (Vocational) Course and have also passed Bridge Course, the marks obtained in compulsory subjects of Senior Secondary (Vocational) Course and optional subjects in Bridge Course should be considered. In accordance with these Government directives, the merit list was prepared and the petitioner did not find place in the order of merit on the basis of aforesaid circular. Number of petitions were filed before this Court challenging the aforesaid

circular and determining the merit of the candidates, who had applied for the post in pursuance of the aforesaid advertisement.

The matter has earlier also reached the Supreme Court where the persons, who have passed Senior Secondary (Vocational) Examination were excluded from being considered for the post of Teacher Grade III inter alia on the ground that Senior Secondary (Vocational) Examination is not equivalent to the Senior Secondary (Academic) Examination.

The said issue was settled by the decision of the Supreme Court in the case of Sunita Sharma & Ors. Vs. State of Rajasthan and others reported in **JT 2001(10) SC 178** in which case the Supreme Court held that the Senior Secondary (Vocational) Examination is equivalent to the Senior Secondary (Academic) Examination as was held by this Court.

Thus, according to the contentions raised before this Court, a candidate having Senior Secondary (Vocational) certificate was eligible for consideration for appointment as Teacher Grade III on its own force. The eligibility qualification of Senior Secondary Bridge Course was not applicable to him and, therefore, while considering the merit, marks obtained by him in Senior Secondary

(Vocational) Course alone could be taken into consideration.

In Vinod Kumar's case S.B. Civil Writ Petition No.4818/2003, decided on 8.11.2004, the learned Single Judge of this Court held that the circular by which the aforesaid formula was directed to be pursued for considering the merit of the candidates was not valid inasmuch as the circular could not have altered the scope of the rules prevailing as on the date the advertisement was issued and the circular could not have been made effective retrospectively. As a consequence of the aforesaid finding, the learned Single Judge directed the respondents to prepare a fresh merit list for recruitment to the post of Physical Teacher Grade III ignoring the directions contained in circular dated 16.8.2003.

Coupled with these directions, it was further directed that if taking into consideration the directions contained in circular dated 31st July, 2003 and advertisement dated 28th July, 2003 in case the petitioner comes within the zone of selection, he may be given appointment.

Thus the respondents were under an obligation to prepare a fresh merit list under direction dated 8.11.2004.

The judgment of the learned Single Judge dated 8.11.2004 was affirmed by the Division Bench in D.B. Civil Special Appeal (Writ) No.DR(J)991/2005 decided on 9.9.2005. Apparently, the directions contained in order dated 8.11.2004 were required to be complied with by the respondent for preparing a fresh merit list in accordance with the directions contained in the order dated 8.11.2004 as aforesaid on 9.9.2005 by excluding the circular dated 16.8.2003.

The petitioner has further referred to the fact that on 29th March, 2004, the respondents have given appointment to respondent No.4, a person who was having lesser marks than him and in furtherance of the judgment of this Court in Vinod Kumar's case, he also requested the respondents to prepare a fresh merit list in accordance with the direction of this court given in the aforesaid judgment. Having not finding any response, the petitioner filed S.B. Civil Writ Petition No.5835/2004 on 16.12.2004.

In the aforesaid circumstance, it is apparent that when the directions issued by this Court for preparing merit de novo in accordance with the directions contained in the order by excluding the circular dated 16th August, 2003 from consideration itself came into effect only on 8.11.2004, the writ petition filed on 16.12.2004 for

seeking relief in terms of such directions could not have been considered to be suffering from laches.

In the aforesaid facts and circumstances, we find that these details appear to have not been brought to the notice of learned Single Judge and the process of filing petition has been considered primarily on the basis of date of advertisement issued and the date of judgment of Supreme Court in Sunita's case (supra).

However, in the aforesaid circumstances, we are of the opinion that once this Court has directed the respondents on 8.11.2004 to prepare a fresh merit list by excluding the circular dated 16.8.2003 from consideration and directed to give relief on the basis of said judgment to seek relief as a result of the said exercise by a petition filed on 16.12.2004 cannot be said to be suffering from laches.

Coming to the merit of the case, it appears to us that to the extent a person who has passed Senior Secondary (Vocational) Course has to be treated as eligible on its own force without referring his other qualifications of Senior Secondary (Academic) and the Bridge Course for considering his eligibility if the recruitment to posts in question is concluded by the decision of Supreme Court. In that

event, the petitioner is entitled to claim determination of his merit on the basis of his marks in Senior Secondary (Vocational) Examination itself without recourse to marks obtained in Bridge Course which does not fall within the ambit of necessary qualification. It is not a case that the person is required to hold both the qualifications i.e. Senior Secondary (Vocational) as well as Senior Secondary (Academic). If a person is holding the only qualification of Senior Secondary (Academic) the requirement of having a bridge course was additional to it. In that event considering the marks obtained at Higher Secondary or Bridge Course together may be considered. However, when Secondary Senior (Vocational) course itself is complete required qualification one cannot be denied merit by referring to marks obtained in bridge course.

We find that in the case of Gopal Lal Suthar Vs. State of Rajasthan and others reported in 2005(3) RDD 204, the Division Bench of this Court relying on a decision of Sunita Sharma & Ors. Vs. State of Raj. & Ors JT 2001 (10) SC 178, has allowed the appeal of the petitioner, who was on successful before the learned Single Judge, in the like circumstances albeit that related to advertisement issued prior to one in question.

As a result, this appeal is allowed. The Judgment

under appeal is set aside. The writ petition is allowed. The respondents No.1 to 3 are directed to consider the case of the petitioner-appellant for appointment, if on the basis of his marks obtained in the Senior Secondary (Vocational) and by excluding the consideration of marks obtained in optional subjects in Bridge Course he finds place in order of merit in accordance with the directions issued in Vinod Kumar's case.

There shall be no orders as to costs.

[R.P. VYAS], J. [RAJESH BALIA], J.

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